IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA NO.835 of 2007

DATE OF DECISION: 12 .7.2007

Bharat Sanchar Nigam Ltd. ...APPELLANT

VERSUS

Pawan Kumar Gupta ...RESPONDENT

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.Madan Mohan, Advocate for appellant

Permod Kohli,J.

This Regular Second Appeal is directed against the judgment and decree dated 2.9.2006 passed by the District Judge, Bhiwani dismissing the appeal preferred by the present appellant against the judgment and decree dated 14.6.2005 passed by the Additional Civil Judge (Senior Division), Bhiwani.

The Appellant is a Company duly incorporated under Companies Act, 1956. The appellant filed a suit for recovery of Rs.25,296/- alongwith interest at the rate of 18% per annum, against

the respondent allegedly on account of non-payment of the outstanding dues for the use of Telephone No.243788 held by the respondent as a subscriber. The amount is said to be due for the period 29.1.1992 till the disconnection on 16.3.1998. Admittedly when the telephone was installed and remained in operation till its disconnection, telephone services were being provided by the Telecommunication Department of Government of India. It is the case of the appellant that the Government of India on the basis of its policy decision established a Company under the provisions of Companies Act, 1956 and vide Memorandum dated 30.9.2000 transferred all the assets and liabilities of Department of Telecommunication Services to the Appellant-Company with effect from 1.10.2000. The Appellant, accordingly, on the basis of the fact that it acquired all the assets and liabilities of the Telecommunication Department of Government of India, filed the suit for recovery against the respondent being the amount payable for the use of the telephone earlier installed by the Telecommunication Department of Government of India.

The suit was resisted by the respondent on variety of grounds, besides challenging the competency of the appellants to seek recovery. The suit was also sought to be dismissed being barred by time. The trial court, on the basis of the pleadings of the parties, framed as many as eight issues. However, the suit was dismissed while deciding issue no.4 which reads as under:-

"(4) Whether the suit is time barred? OPD"

The trial court, though concluding that the amount is due and

payable by the respondent, dismissed the suit as barred by time. According to the findings of the trial court, the period of limitation for filing such a suit by the Company is three years. The trial court also rejected the contention of the appellant that the period of limitation is 30 years under Article 112 of the Limitation Act, 1963. The appeal preferred by the appellant before the District Judge, Bhiwani also resulted in dismissal. The First Appellate Court concurred with the findings of the trial court on the question of limitation. Both the judgments of the courts below are assailed before this Court.

The main and only argument canvassed before me is that for the appellant being a Government Company, the period of limitation for seeking recovery will be governed by Article 112 of the Limitation Act, 1963 and not under any other Article. Article 112 of the Limitation Act, 1963 reads as under:-

THE SECHDULE
PERIODS OF LIMITATION
[*See Sections 2(j) and 3]*

"Description of Suit	Period of Limitation	Time from which period begins to run
XXX	XXX	XXX
112.Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government, including the Government of the State of Jammu & Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.

No doubt, under the aforesaid Article, the period of limitation

is 30 years when the period of limitation would begin to run under this Act against a like suit by a private person. This Article clearly provides a suit by Central Government or by any State Government including the Government of Jammu & Kashmir. The expressions "Central Government" and "State Government" are not defined under the Limitation Act. In the absence of any such definition under this Act, the definition as provided under the General Clauses Act, 1897 is to be looked into. Section 3 (8) of the General Clauses Act, 1897 defines "Central Government" as under:-

> "3 (8). "Central Government" shall---
>
> (a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General in Council, as the case may be; and shall include,
>
> (i) in relation to functions entrusted under sub-section(1) of Section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section, and
>
> (ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of Section 94 of the said Act; and
>
> (b) in relation to anything done or to be done

> after the commencement of the Constitution, mean the President; and shall include,
>
> (i) in relation to functions entrusted under clause (1) of Article 258 of the Constitution to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;
>
> (ii) in relation to the administration of a Part C State [before the commencement of the Constitution (Seventh Amendendment) Act, 1956], the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under Article 239 or Article 243 of the Constitution, as the case may be] [and]
>
> (iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution:]]"

From the aforesaid definition, the expressions "Central Government" can include only such authorities as are indicated therein. It is admitted case of the appellant that the appellant is a Company incorporated under the Companies Act, though it has acquired the assets and liabilities of a department of the Central

Government. The appellant being a Company is a separate and distinct entity from the Central Government. Whether its functioning is controlled by the Central Government as claimed by the appellant or not, is irrelevant. It may be a wholly controlled government company, but insofar as its legal and contractual rights and liabilities are concerned, it cannot acquire the status of "Central Government", by any stretch of imagination. The expression "Central Government" as defined in the General Clauses Act does not include even within its expansive definition a Government owned or controlled Company. Article 112 clearly provides the limitation in respect of a suit by Central Government or by State Government and not by any of its instrumentalities or agency, particularly a Corporation, even if established by the Central Government/State Government. The findings recorded by the courts below on this question cannot be faulted with.

In view of the above, this Regular Second Appeal fails being without merit and is accordingly dismissed.

(PERMOD KOHLI)
JUDGE

12 .07.2007
MFK

NOTE: Whether to be referred to the Reporter or not:YES